

DETAILED ACTION

Notice of Reply

1. In response to the reply filed on 08/10/2009, the Examiner reiterates claim(s) were previously canceled 1-23, 37-47, 55-62, and 75. The current rejections of the claim(s) is/are *withdrawn*. The following is/are set forth:

Election/Restrictions

2. Applicant's election without traverse of Group I, directed claims 24, 29, 31, 32, 35, 36, 48-50, 54, 76, 79-85, and 87-90, in the reply filed on 08/10/2009 is acknowledged.

3. Claims 63, 64, 66, 69-71, 77, and 78 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected Group II there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 08/10/2009.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Claims 24, 48, and 79 are allowable. The restriction requirement between species, as set forth in the Office action mailed on 05/28/2008, has been reconsidered

in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 30, 33, 34, 51, 53, and 86, directed to a non-elected allowable method, are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 65, 67, 68, 72-74, 77, and 78, directed to a non-elected apparatus remain withdrawn from consideration because they do not require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Margaret Carley on 09/16/2009.

The application has been amended as follows:

Claims 63-74, 77, and 78 should read (Cancelled).

Allowable Subject Matter

7. Claims 24-36, 48-54, 76, and 79-90 are allowed.
8. The following is an examiner's statement of reasons for allowance: the prior art does not disclose, teach, and/or fairly suggest a method of physiological function assessment in an individual, comprising *inter alia*: placing a sensor on an individual; the sensor comprising a stimulator shaped to fit a first anatomical site and for applying a stimulus to a nerve, a detector shaped to fit a second anatomical site and having fixed position electrodes for detecting a response to the stimulus, and mechanical and electrical connector therebetween configured to automatically position the stimulator and detector at the anatomical sites based on the connectors mechanical orientation; performing nerve conduction studies to assess the physiological function in the individual, wherein the nerve conduction studies comprise iteratively operating the sensor and processing the signals therefrom by evaluating and comparing a selected parameter.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

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/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736